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CONSOLIDATED REPLY COMMENTS

ATTENTION:

CABLE SERVICES BUREAU

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC. 20554

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In The Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Review of the Commission's Cable Attribution Rules	)	CS Docket No. 98-82
In The Matter of Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992 Horizontal Ownership Rules	)	MM Docket No. 92-264

CONSOLIDATED REPLY COMMENTS OF RCN TELECOM SERVICES, INC.

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Dated: September 3, 1998

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CONSOLIDATED REPLY COMMENTS OF
RCN TELECOM SERVICES, INC.[1]

RCN Telecom Services, Inc. ("RCN"), by the undersigned counsel, herewith submits its Consolidated Reply Comments in response to the Federal Communications Commission's ("Commission") *Notice of Proposed Rulemaking* in CS Docket No. 98-82 ("*Attribution Notice*")[2] and *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 92-264 ("*Ownership Further Notice*").[3] As set forth below, RCN respectfully urges

[1] RCN Telecom Services, Inc. filed separate initial comments in the above-captioned matters but in light of the close nexus between the respective subject matters of these dockets and the filing of consolidated initial comments by others, RCN has elected to consolidate its reply comments.

[2] FCC 98-112, *rel.* June 26, 1998.

[3] FCC 98-138, *rel.* June 26, 1998.

the Commission to more actively exercise its authority, through the development of new or modified rules or policies governing MVPD market structure and specifically future cable transactions. Specifically, RCN urges the Commission to closely examine mergers, sales, transfers and other joint economic ventures among incumbent cable multiple system operators ("MSOs") that may adversely affect competition in video programming markets, either nationwide or regionally.

I. INTRODUCTION

RCN, alone and through various affiliations, is a facilities-based competitive provider of local exchange and long distance telephone services, high-speed Internet access, and traditional franchised cable and/or open video system ("OVS") services, primarily to residential subscribers. In video markets, RCN is the largest investor in and implementor of the OVS concept.[4] Alone or with various affiliates, RCN is certified to provide OVS services in the metropolitan areas of Boston, MA, New York City, Washington, D.C., San Francisco, CA, Philadelphia, PA, and northern New Jersey.[5] Currently, RCN offers OVS service in portions of New York City and Boston, and will offer OVS services in several surrounding communities of both cities in the

[4] 47 U.S.C. §§ 573-575.

[5] *Memorandum Opinion & Order, RCN-BeCoCom-BETG, LLC*, 12 FCC Rcd 2480 (1997); *Memorandum Opinion & Order, Residential Communications Network of New York, Inc.*, FCC Rcd 2477 (1997); *Memorandum Opinion & Order, Starpower Communications, LLC*, 13 FCC Rcd 2169 (1998); *Memorandum Opinion & Order, RCN Telecom Services of California, Inc.*, DA 98-1158, *rel.* June 15, 1998, *recon pending*; *Memorandum Opinion & Order, RCN Telecom Services of Philadelphia, Inc.*, DA 98-1155, *rel.* June 15, 1998; *Memorandum Opinion & Order, RCN Telecom Services of New Jersey, Inc.*, DA 98-1530, *rel.* July 31, 1998.

coming months. Service is expected to begin in Washington, D.C. and certain of its suburban communities by year end 1998.

The initial comments in the respective proceedings reveal the incumbent cable industry's transparent goal of further tightening its already overwhelming control over the video marketplace. Tele-Communications, Inc. ("TCI"), Time Warner Cable Co. ("Time Warner") and Cablevision Systems Corp. ("Cablevision"), the first, second and sixth largest MSOs in the country, respectively, urge the Commission to take a hands-off approach to these cable multiple system operators' ("MSOs") plans to increase vertical control over programming availability as well as their horizontal concentration, or clustering, of subscribers. For example, Time Warner would have the Commission become mired in determinations of what constitutes Time Warner's "managerial control" over other cable systems rather than have the Commission employ unambiguous and certain numerical measurements of concentration. Similarly, Cablevision urges the Commission to rely almost completely on other federal agencies' review of such transactions as its recent purchase of 845,000 subscribers in the New York/New Jersey area, despite the Commission's broad statutory obligations and its unparalleled expertise in telecommunications matters.

RCN argued in its initial comments on the *Ownership Further Notice* that, rather than relax its rules governing the concentration of cable subscribers, the Commission should reduce from 30% to 20% the maximum percentage of the multichannel video programming distribution ("MVPD") market accessible by any one cable operator (plus affiliates). RCN noted that incumbent cable operators already possess the incentive and ability to impede competition through the multiple filing of federal and local regulatory pleadings, denying competitors access to affiliated programming, and interfering with competitors' service to subscribers within multiple dwelling unit buildings. RCN stated that, because the current concentration maximum has failed to restrain these efforts, raising the maximum would only allow the cable incumbents even more freedom and economic power to choke off incipient competition.

In this vein, RCN also supported changing the measurement of horizontal ownership to more accurately reflect the reality of the cable monopoly's power. Finally, in its comments in both proceedings, RCN urged the Commission to take meaningful steps to foster competition by limiting cable MSOs' ability to cluster systems. RCN's experience in New York, as described below, is that large regional clustering of systems increases a cable MSO's incentive and ability to hinder competition from alternative MVPDs with respect to service rates, access to programming, and the regulatory environment in the particular region.

II. REPLY COMMENTS

A. The Commission Should Foster Competition by More Actively Exercising its Discretion Regarding Concentration in the Video Marketplace

Not surprisingly, commenting cable operators urge the Commission to relax, if not eliminate, its review of cable operators' efforts to increase their monopolistic influence over the video marketplace. Time Warner, for one, argues that the 30% limit on a cable operator's nationwide concentration of subscribers is too low, and offers supposedly supporting evidence concerning the relative growth of alternative MVPDs and programming services.[6] Time Warner also suggests that, despite the "low" ceiling, no cable MSO has yet to approach it.[7] It asserts that

[6] Time Warner Comments at p. 22.

[7] Time Warner Comments at pp. 25-28.

under traditional antitrust analysis, no single firm can be considered to pose monopolistic risks with less than 40% of the relevant market, referring to cases in the airline and agriculture industries, among others.[8] Time Warner thus urges the Commission to raise the horizontal ownership maximum to "at least 35%."[9] Time Warner apparently would have the Commission forego its own analysis of the risk of MVPD market dominance in favor of complete reliance on antitrust law.

As a preliminary matter, Time Warner's arguments serve only to beg the question. First, the cable industry's own data reveal that the entrenched cable monopoly serves over 85% of MVPD subscribers nationwide.[10] The five largest cable MSOs serve 60% of the cable market.[11] According to NCTA, cable's share of the MVPD market declined two percentage points from 1996 to 1997 and two and one-half points from 1997 to 1998.[12] Since this decrease occurred during the time frame when cable's major competitor, DBS, first developed and has probably peaked, these figures should not be viewed as very encouraging. In fact, even if competition continues to increase at the same rate, it would take about 17 years before non-cable MVPDs could capture only half of the MVPD market. Of course, such progress is not likely. MMDS, which has been providing wireless cable for many years, has secured only about 2% of the market, and incumbent LECs, through cable franchise overbuilds and OVS, have captured less

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[8] *Id.*, at p. 23 n.60.

[9] *Id.*, at p. 25.

[10] *See* NCTA Comments in CS Docket No. 98-102 at p. 6.

[11] *See* Chicago Sun Times, May 13, 1998 (1998 WL5580527).

[12] NCTA Comments in CS Docket No. 98-102, July 31, 1998.

than 4/10ths of one percent of the market.[13] Obviously, the video marketplace has a long way to go before alternative MVPDs can meaningfully affect the cable industry's behavior nationwide.[14]

Time Warner's assertions regarding program availability also are unconvincing given the consistent stream of program access complaints that alternative MVPDs are forced to file against cable incumbents, as well as the Commission's recent action to strengthen and streamline its program access rules.[15] Time Warner's reliance on general antitrust law also ignores the fact that cable systems are almost invariably monopolists in each of their home markets. Time Warner also fails to take account of the unique factors associated with the production, packaging and distribution of information. Information is not the same as airline travel or oranges, and the public interest in diverse information sources and views, so critical to an information intense democracy and post industrial economy must be paramount in any consideration of concentration in the communications market.

Equally important, Time Warner's argument simply reads Section 613 out of the Communications Act.[16] As Time Warner concedes, Congress adopted the restriction in part to temper possible anti-competitive behavior resulting from horizontal concentration.[17] Congress

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[13] *Id.*

[14] *See* RCN Reply Comments in CS Docket No. 98-102 at p. 14.

[15] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Petition for Rulemaking of Ameritech New Media, Inc. Regarding Development of Competition and Diversity in Video Programming Distribution and Carriage*, Report and Order, CS Docket No. 97-248, RM No. 9097, FCC 98-189, *rel.* Aug. 10, 1998 ("*Program Access Order*").

[16] 47 U.S.C. § 533.

[17] Time Warner Comments at p. 8.

obviously would not have invested the Commission with the authority to adopt and enforce rules in this area if it did not intend the Commission to actively exercise this authority and to do so independently of the respective antitrust authorities of the Department of Justice and Federal Trade Commission. The Commission possesses specialized expertise with respect to communications issues on which Congress intended the Commission to rely in designing and enforcing policies specifically crafted to address the MVPD industry. If, as Time Warner alleges, reliance on the Department of Justice's enforcement of antitrust law were all that is required, Section 613 of the Act would be rendered meaningless and indeed this proceeding would have no purpose.

It is well-settled that the Commission's responsibilities extend well beyond the parameters of antitrust laws. For example, in weighing the public interest benefits of license transfers, the Commission's mandate to consider competitive issues is a separate and distinct obligation from the Department of Justice's responsibility to enforce the antitrust laws. Simply put, the Department of Justice must enforce the antitrust laws but the Commission must effectuate the policies of the Communications Act.[18] These dual responsibilities were exercised when the Teleprompter Corporation sought to transfer more than 100 CARS licensees to Westinghouse as part of a merger agreement. There, even though the Department of Justice already had passed on the merger, the Commission noted that its functions necessarily involve

[18] *See, e.g.*, *ABC Cos., Inc.*, 7 FCC Rcd 245, 249 (1966).

making findings related to public interest, convenience and necessity, in addition to pertinent antitrust policies.[19]

In a vein similar to that followed by Time Warner, Cablevision contends that the Federal Trade Commission ("FTC") had no problems with Cablevision's March 1998 merger with Tele-Communications, Inc. ("TCI") in the New York City metropolitan area.[20] There, Cablevision acquired 845,000 subscribers in New Jersey and Westchester, New York from TCI in exchange for a 33% equity interest in Cablevision. Before the acquisition, Cablevision already served approximately 440,000 subscribers in the Bronx and Brooklyn, 50,000 in Yonkers, about 200,000 in Connecticut, and agreed to acquire an additional 250,000 Connecticut subscribers from TCI,[21] bringing Cablevision's subscribership in the New York-New Jersey-Connecticut area to more than 2.6 million cable customers. In addition, Cablevision' Rainbow Programming, LP is one of the largest program suppliers in the nation, with interests in Madison Square Garden, two professional New York sports teams, Radio City Productions and the MSG channel.

Cablevision states that the TCI merger advances its clustering strategy.[22] Cablevision contends, without support, that this huge cluster of subscribers enables it to bring benefits to subscribers, such as video-on-demand, expanded program lineups, cable modems and data delivery, and provides it with the size allegedly necessary to offer low cost competition to

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[19] *Teleprompter Corp.*, 87 FCC 2d 531 (1981).

[20] Cablevision Comments at p. 5.

[21] Cablevision Press Release dated January 27, 1998. To RCN's knowledge, this proposed acquisition has not yet been submitted to the Connecticut Department of Public Utility Control for approval.

[22] Cablevision Comments at p. 12.

telephone companies.[23] In reality, these arrangements provide Cablevision with more incentive and ability to fight incipient competition from RCN and other alternative MVPDs. Neither Cablevision nor any other MSO advocating complete freedom of growth has provided a scrap of evidence to demonstrate that further growth is essential to their provision of new or expanded services. RCN, after all, is still only an emerging entrant, with only a few thousand subscribers. Yet RCN is able to deliver most of the services and efficiencies Cablevision claims, as well as beat Cablevision on both price and service offerings.[24] RCN also offers telephone service, an extension of its offerings which Cablevision claims it cannot do without significant further growth. Not only does RCN offer local exchange and interlata service but does so at a 5% discount compared to the incumbent's price.

Despite the tremendous competitive impact of the Cablevision/TCI acquisition, the FTC approved it with only a minor divestiture of two overlapping cable systems, observing that the FTC does not consider multichannel video programming technologies other than cable television, *e.g.*, direct broadcast satellite and wireless cable, to be part of the relevant market for antitrust analysis because "they do not have a significant price-constraining effect on the prices charged by cable operators to subscribers."[25] Indeed, OVS is not even mentioned. The FTC's approval, of course, is based solely on an antitrust analysis of the proposal. Yet it is largely

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[23] *Id.*, at pp. 13-14.

[24] *See* RCN Initial Comments at Exhibit A (Comparisons of RCN prices and services with incumbent cable operator in Boston suburbs).

[25] *See* In the Matter of Cablevision Systems Corporation, File No. 971-0095, 63 F.R. 5545, Notice at 3 (Feb. 3, 1998).

because Congress considered this scope of review inadequate for the video marketplace that it enacted Section 613 of the Act. RCN believes that Commission scrutiny of this major transaction should have been required by applicable Commission rules.

The significant point, however, is that the Commission did not, indeed, could not, review this transaction. While Section 613 of the Communications Act, as well as the Commission's general statutory responsibility over communications matters,[26] are ample authority for the Commission to adopt and enforce rules governing cable mergers and transactions, the Commission did not examine the potential competitive effects arising directly or indirectly from the merger. When the transfer of licensees are involved, the Commission typically reviews the proposed transaction to determine if it will increase or create market power or otherwise enable the parties to engage in predatory conduct.[27] On a case-by-case basis, the Commission analyzes the two competitors' market positions and whether the proposed transfer would enhance their market shares to the degree that a risk of monopoly power in a particular market is posed.

However, when no transfer of broadcast or other licenses is involved, in the absence of a regulation requiring its review, the Commission has no specific basis to review cable acquisitions. As described above, the Cablevision/TCI acquisition's impact on the New York-area MVPD market is likely to be substantial. The New York metropolitan area is the most important and largest communications market in the world, and as transactions in New York go,

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[26] 47 U.S.C. § 154(4)(i).

[27] *See, e.g.*, Tele-Communications, Inc. and Liberty Media Corporation, Applications for Consent to Transfer Control of Radio Licenses, 9 FCC Rcd 4783 (1994).

others in lesser markets will surely follow.[28] RCN, as an emerging competitor in this market, is extremely wary of Cablevision's newly increased power, yet had no procedural or substantive focal point at the Commission in which to make known its concerns. Moreover, it should not be the competitors' responsibility to raise objections to such clearly significant acquisitions. Accordingly, RCN urges the Commission to exercise its authority under the Communications Act to adopt policies and rules permitting it to examine cable MSO transactions. As the situation in New York vividly demonstrates, the Commission's participation is required if alternative MVPDs are to enjoy a reasonable opportunity to offer competitive services.

On a related point, as RCN urged in both sets of its initial comments, the Cablevision/TCI acquisition dramatically highlights the weaknesses in the present rules, and illustrates why the Commission should lower the horizontal ownership bar to impose a 20% ownership limit in any of the largest 50 markets or 10% of the homes in more than one of the top 10 or more than three of the top 25 markets.[29] Such a rule would not unduly hamper MSOs or others who wish to increase their role in the MVPD industry. These parties would remain free to seek waivers of any rule which on its face bars any particular acquisition. However, the burden rightly would fall on the participants to justify any acquisition exceeding a reasonable allowed maximum on public interest grounds. The Commission would have an opportunity to review the proposal and to approve, deny, or condition such an acquisition. Had such a rule or rules been in

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[28] Cablevision and TCI may well conclude that, if they can escape FCC review in the premier MVPD market, they can escape anywhere.

[29] *See* RCN Comments in CS Docket No. 98-82 at p.16; RCN Comments in MM Docket No. 92-264 at p. 20

effect when TCI and Cablevision agreed to their merger, the Commission would have had an opportunity under Section 613 of the Act similar to that given to the FTC by the Hart-Scot-Rodino Antitrust Improvement Act of 1976[30] to review the transaction and take appropriate action.

Section 613 represents a vital expression of Congressional concern and a mandate which the Commission simply cannot disregard regardless of the preferences of Time Warner and other cable MSOs. Moreover, while it is relevant that no single cable MSO has yet approached the 30% maximum, that circumstance falls well short of a finding that the market is not already over-concentrated in the hands of a few cable MSOs. Accordingly, RCN urges the Commission to more actively exercise its discretion to review and prevent, limit, or condition as it deems necessary, mergers among incumbent cable MSOs that could adversely affect the public interest in competition and diversity in information sources and views.

B. The Ownership Measurement Must Reflect the Cable Industry's True Market Influence

Time Warner urges the Commission to modify the measurement of a cable MSO's share of the MVPD market in a manner most beneficial to franchised cable operators. Time Warner argues that the numerator of the equation should include only subscribers served by traditional franchised cable operators, but not the subscribers served by other MVPDs in which a cable operator has an interest. On the other hand, Time Warner argues that the equation's

[30] 15 U.S.C.§ 15a (HSR Act). Cablevision erroneously describes the HSR Act as applying to "any entity acquiring the stock or assets of another entity ...". Cablevision Comments at p. 17 n. 32. In fact the law applies only to transactions falling within certain minimum size criteria. The TCI/Cablevision merger required notification under the HSR Act because it was a massive transaction.

denominator should include all non-cable subscribers. In other words, Time Warner wants the Commission to ignore the interests of Time Warner and the other cable MSOs in PrimeStar, which has one of only three licenses for prime orbital locations for the delivery of direct broadcast services and currently serves almost two million subscribers, while giving weight to alternative MVPDs' service to non-cable subscribers.

Time Warner bases this manifestly lopsided recommendation on a tortured description of the supposed difficulty of measuring the number of homes passed by a cable operator and on Section 613's reference to "cable subscribers" but not to alternative MVPDs' subscribers.[31] However, this approach both misreads the statute and discounts the provision's purpose. The statutory scheme is clearly concerned with the cable industry's dominance in the distribution of video programming and the provision must be read to carry out Congress' intent rather than be limited by an artificial and narrow reading. As RCN noted in its initial comments, despite growth in non-cable MVPD services, cable incumbents continue to control the availability of much of the most vital and popular programming.[32] In fact, the Commission only last month felt it necessary to increase the sanctions for cable operator violations of its program access rules and streamline the procedures for such complaints.[33] Certainly the Commission would not have taken this action if cable operators no longer were able to exercise great influence over programming availability. Thus, for the same reason that Time Warner deems it germane to the

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[31] Time Warner Comments at pp. 28 and 32.

[32] RCN Comments at p. 16.

[33] *Program Access Order*, FCC 98-189.

purpose of the horizontal ownership limit to include the universe of all MVPD providers, the subscribers served by cable MSOs, including those served through some medium other than traditional cable distribution, should be included in the numerator of the fraction.

Adopting Time Warner's argument to shift the measurement's focus from homes passed to subscribers served would artificially reduce the public's perception of the economic clout of cable operators. A home passed by a cable operator is a potential subscriber that can be attached to the system quickly, easily and inexpensively. Indeed, once a home is "passed" the bulk of the cost of hooking up a subscriber is the technician's visit which in most cases is borne by the subscriber. Though a cable operator may actually serve a relatively small percentage of the nation's or a region's homes, it is the number of homes passed by the operator that is the more accurate measure of the operator's market influence.

C. <u>Attribution Should be Based on Clearly Defined, Common Sense Factors</u>

Cable interests predictably argue that the Commission should relax its attribution standards.[34] Time Warner, for one, contends that attribution should be grounded in "managerial control" rather than any of the multiple criteria suggested by the Commission in the *Attribution Notice*.[35] The difficulty with such a vague concept is that it is impossible to define or apply meaningfully. While bright line rules may lack flexibility, they at least provide some measure of predictability and minimize the need for the Commission to devote significant resources to making judgments on a case-by-case basis. Indeed, basing regulatory oversight of the cable

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[34] *See, e.g.*, Time Warner Comments at pp. 32-69; Cablevision Comments at pp. 17-19; MediaOne Comments at pp. 5-11; TCI Comments at pp. 4-40.

[35] Time Warner Comments at pp. 32-33.

industry's growth and concentration on managerial control would virtually invite the industry to try the Commission's patience and resources by creating carefully designed corporate structures in which certain interests or individuals are nominally or partially disenfranchised on paper but in practice can dominate or at least heavily influence corporate decisions. Time Warner's scheme is simply not practical and would lead to the Commission's endless, exhausting and necessarily inconclusive review of various corporate organizations and decision-making in an effort to determine where influence or control actually lies. TCI similarly advocates "operational control" as the relevant criterion. TCI contends that an operator's self-certification that no undue influence is possible should be sufficient, and relies on a wide variety of certification regimes which currently exist in inapposite contexts, *e.g.*, where a specific objective fact is being certified.[36]

Cablevision's acquisition of 845,000 TCI subscribers in the New York area illustrates the fatal weakness of these approaches. In exchange for the 845,000 subscribers, TCI received 33% of Cablevision's equity. By agreement between the parties to the transaction most of this equity is designated as "non-voting" so that TCI ostensibly obtained only an 8.9% voting interest in Cablevision.[37] Cablevision claims that TCI's influence over its policy-making is otherwise limited by corporate instruments or agreements governing TCI's exercise of its voting power.[38]

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[36] TCI Comments at pp. 3 and 18.

[37] Cablevision Comments at p. 4. Cablevision conveniently argues for raising the voting stock limit in the attribution rules to 10%; one wonders what level Cablevision would support if TCI's had acquired a voting interest in Cablevision of 10% or more. *Id.*, at p. 18.

[38] *Id.*, at pp. 12, and 15, n.24.

However, given TCI's status as the largest MSO in the country, with interests in at least a third of the nationwide video distribution market and in many of the most critical and popular programming services, the Commission would have to be dreadfully naive to believe that TCI cannot and will not heavily influence Cablevision's programming and or other corporate decisions. Given TCI's nationwide presence and Cablevision's New York City presence, their combined economic power in the MVPD market, both in New York and nationally, is enormous.[39] RCN is not suggesting that responsible corporate entities would wilfully mislead the Commission regarding voting interests, contractual rights, or other quantifiable measurements. Rather, RCN simply observes that the practicalities of corporate decision-making are often quite different from structures set forth on paper. Influence can be subtle; there may be no need for overt instruction or expressions of preference. Rather, rational decision-makers surely will internalize the interests of those entities with substantial investments in an enterprise, voting or not, and make every effort to serve them. RCN urges the Commission to avoid stepping into these predictable quagmires and simply maintain the approach represented by numerical limits in the horizontal cable ownership and cable attribution rules. These limits provide clarity, certainty and will preserve the Commission's resources. They serve the additional purpose of illuminating and taking account of the actual influence that invested but artificially disenfranchised entities hold and exercise. Whether the criterion is "control"or

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[39] While not directly relevant to the instant inquiry, it is illustrative of the point made in the text that it is exceedingly unlikely that TCI's prospective owner, AT&T, will not "influence" Cablevision's much vaunted plans to roll out local exchange or internet services.

"influence," vagueness of the standards advocated by the MSOs will be almost impossible for the Commission to administer.

D. **MVPD Competition Should Not Be Sacrificed to Enhance Cable Operators' Ability to Compete with Telephone Companies**

Cable interests argue that their further growth is essential to their ability to compete with incumbent local exchange carriers ("LECs") in the provision of video and non-video services.[40] Whether or not this is true, it is irrelevant to the present inquiry. The *Attribution Notice* and *Ownership Further Notice* focus on competition in the video marketplace and are not properly vehicles for enhancing the entrenched cable industry's competitive position *vis-a-vis* telephone companies. Above RCN notes that no justification is provided for the implicit assumption that MSOs must be megaliths to compete with LECs. Moreover it borders on the hypocritical for these cable MSOs' to seek the Commission's help in competing against LECs while completely discounting the long overdue and compelling need for increased competition in their core markets, and it would be perverse for the Commission to assist them in this endeavor. The cable industry already is overwhelmingly dominant in the MVPD industry, and the Commission should not allow it to further increase its economic clout so it can bulk up for competition which may or may not arise with LECs, when that clout could just as easily be used to stifle the public interest in increased competition in the video marketplace. RCN, as one of the emerging MVPDs, urges the Commission not to sacrifice the still incipient competitive segment of the MVPD industry to the putative advantages of increasing cable MSOs' size to battle with telephone companies.

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[40] *See, e.g.*, Time Warner Comments at pp. 46-47; Cablevision Comments at pp. 20-22.

III. CONCLUSION

The underlying purpose of Section 613 of the Communications Act and the Commission's horizontal ownership and attribution rules is to promote competition in video markets. RCN believes that only by vigorous pro-active Commission participation through the development of policies and rules restraining cable MSOs can the public interest in diversity, choice, superior service and competitive prices be served. Accordingly, RCN urges the Commission to disregard the incumbent cable industry's attempts to shackle Commission oversight and control of MVPD industry concentration and instead use these rulemaking proceedings as vehicles for tightening its control over the market so as to enhance the ability of alternative and other MVPDs to offer competitive services.

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September 3, 1998

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